

OSHA - RFI

The Occupational Safety and Health Administration (OSHA), which is part of the Department of Labor, published a Request for Information (RFI) on September 20, 1991. The comment period closed March 20, 1992.

OSHA, with certain exceptions, has regulatory jurisdiction over the workplace, and the RFI is the first step in possible regulatory rulemaking relating to indoor air. The RFI process does not require OSHA, however, to take any specific future action. (NOTE: This is in contrast to an Advanced Notice of Proposed Rulemaking or a Notice of Proposed Rulemaking which are more advanced stages in the OSHA process.)

We believe that a balanced regulatory structure is possible if OSHA pursues rulemaking based on an objective review of the science. We believe that a crucial element of our strategy in accomplishing this objective is to encourage OSHA (1) to assert jurisdiction and (2) to proceed quickly with a comprehensive regulation on indoor air.

Reasons for this strategy include the following:

OSHA to Assert Jurisdiction

- We believe that there will be a regulation(s) on indoor air. OSHA is preferable to EPA, where we know where we stand and which traditionally follows a substance by substance approach or source control strategy.
- We are hopeful that we will receive far less bias consideration at OSHA as we are confident that we will be more successful at building coalitions with other companies, legislators, administrators, etc., as part of the OSHA process. NOTE: This is assuming that OSHA continues to focus on the overall issue of IAQ as opposed to ETS specifically.

OSHA to Act Quickly

- OSHA, which has a reputation for acting slowly, is getting pressure from groups such as ASH and others in Congress to act quickly. Also, Congress is considering IAQ legislation, which depending on its version, could give greater regulatory authority to EPA.
- ETS could be put on a separate fast track if OSHA delays.

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TIMING

The OSHA process could take at least 2-5 years, including appeals. A very optimistic schedule might look as follows:

March '92 - comments received
Fall '92/Spring '93 - proposed rule or standard
Summer '93 - hearings
Winter '94 - final standard

RFI QUESTIONS

There were 92 questions posed by OSHA on the RFI covering a wide range of issues on IAQ including: ventilation system performance; methods for assessing and monitoring IAQ; building maintenance programs; discussion of health effects attributable to poor IAQ; discussion of ETS health effects, smoker separations and smoking policies; potential contents of a regulation.

OSHA DOCKET

To date, over 1,100 submissions have been received on the docket, which, in terms of numbers, is a staggering response to a RFI by OSHA standards. There are four groups within OSHA that will be reviewing the submissions. Responses fall into three categories: general comments on the IAQ issue, pro-smoking comments and anti-smoking comments.

The docket is important to us as well because part of the official OSHA "record" which may be used and relied upon by OSHA in any rulemaking on indoor air. The comments may also comprise part of the record for any court review of OSHA action. With this in mind, we have tried to be complete in compiling an exhaustive record on the science, and a detailed record on the total IAQ issues, in the belief that this will make it more likely that the OSHA focus will be on the total IAQ issue and not one source such as ETS.

APPROACH

We have attempted to take what might be described as a forthright position with OSHA. We describe ourselves as the employer of 166,000 workers, as a building owner/manager and as a major manufacturer both in the United States and internationally. As we have endeavored to answer most of the 92 questions posed and to identify, and in many cases, provide copies of relevant and

supporting studies/reports/articles, etc., our response is probably over 1,000 pages in length. In addition to individual question summaries to all questions answered, however, we have prepared an Executive Summary and a refutation of the Surgeon General's comments on ETS, the NIOSH CIB and the EPA draft risk assessment. (Copies of the Executive Summary and our Refutation on the Science have been attached.)

Despite our interest in having OSHA assert jurisdiction and act quickly, we do not urge regulation. On the contrary, the crux of our position is to argue that ETS plays a minor role in sick building syndrome and that typical exposures to ETS in the workplace are minimal. We urge that no regulation on ETS is necessary. We refer to NIOSH and other data bases that find ventilation responsible for over 50% of investigated IAQ complaints--compared to the 2-5% of investigated complaints that have been attributed to ETS.

We do go on to provide information on IAQ problems and provided studies/reports on IAQ--particularly highlighting the building systems approach. (NOTE: A building systems approach means a focus on design, construction, operation and maintenance of buildings to provide good IAQ.) We also identify F.A.C.T., or filtered air control technology, which is a state of the air ventilation system developed by R&D and PM Engineers in Richmond. F.A.C.T. plays the dual role of being illustrative of PM's interest in the IAQ issue, and its interest in providing solutions.

Another aspect of our approach has been to remind OSHA that to the extent that it concludes that regulation is required--that it follow the OMB policy circular that urges government to adopt private industry standards where feasible. We go on to help identify industry standards. The American Society of Heating Refrigeration and Air-Conditioning Engineers (ASHRAE), arguably the most important organization which promulgates standards in this area, has a standard on ventilation which we have highlighted. Significantly, this standard (as opposed to its predecessor which had a dual standard for smoking and non-smoking rooms) is premised on smoking by 30% of room occupants.

We believe that the success of PM's accommodation policy will in part be determined by how the IAQ issue is resolved. We are hopeful that as part of the RFI process, OSHA will better appreciate the complexity of the IAQ issue and put ETS in its proper perspective--as a visible indicator of poor indoor air--but as a very minor contribution to the IAQ problem.